



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201331011

MAY 07 2013

Uniform Issue List: 408.03-00

Legend

Taxpayer A	=
IRA B	=
Annuity C	=
IRA D	=
IRA E	=
IRA F	=
Account G	=
Amount H	=
Amount I	=
Financial Institution L	=
Financial Institution M	=
Financial Institution N	=
Financial Advisor O	=

Dear :

This letter is in response to a request for a letter ruling dated December 22, 2011, as supplemented by correspondence dated July 2, 2012, from your authorized representative, in which you request a waiver of the 60-day rollover

requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations were submitted under penalty of perjury in support of your request for a waiver.

Taxpayer A maintained IRA B, an individual retirement account as defined in Code section 408(a), with Financial Institution L. Taxpayer A represents that he was receiving substantially equal periodic payments within the meaning of section 72(t)(2)(A)(iv) of the Code from IRA B, with each payment equal to Amount H. He further represents that in March, 20 , he inadvertently received an additional payment of Amount H from IRA B. Taxpayer A asserts that his failure to accomplish a rollover of Amount H within the 60-day period prescribed by section 408(d)(3)(A) was because he was not aware that an error made by his financial advisor resulted in the additional payment of Amount H to Taxpayer A.

In 20 , Taxpayer A maintained an IRA with Financial Institution L as the custodian. At this time, Taxpayer A's financial advisor, Financial Advisor O, was affiliated with Financial Institution L. In June of 20 , Financial Advisor O advised Taxpayer A to purchase a variable deferred annuity contract, Annuity C, issued by Financial Institution M, with a portion of the assets in his IRA. After the acquisition of Annuity C, Taxpayer A maintained two separate IRA accounts with Financial Institution L, IRA B, which held Annuity C, an individual retirement annuity within the meaning of section 408(b) of the Code, and IRA D, an individual retirement account within the meaning of section 408(a), the assets of which were invested in mutual funds.

In August of 20 , after consulting with Financial Advisor O, Taxpayer A, then age 55, began receiving a series of substantially equal periodic payments from Annuity C through IRA B using the fixed annuitization method. In order for Financial Institution L to make the distributions, on a monthly basis Financial Institution M would distribute Amount H to Financial Institution L and Financial Institution L would transfer Amount I, an amount equal to Amount H less withholding for state and federal income taxes, to Taxpayer A's checking account, Account G. To the best of Taxpayer A's knowledge, Financial Institution M transferred Amount H to Financial Institution L one month prior to the transfers of Amount I by Financial Institution L to Account G. As a result, IRA B always held a balance equal to Amount H plus any interest accrued on that amount.

In 20 , Financial Advisor O terminated his relationship with Financial Institution L and became affiliated with Financial Institution N. In December of 20 , Taxpayer A completed the paperwork for transferring IRA D to Financial Institution N and on January 4, 20 , the assets in IRA D were transferred to IRA E maintained by Financial Institution N. Because Financial Institution N did not serve as a custodian for annuity contracts within an IRA, Financial Institution N submitted a request to Financial Institution M in February, 20 , to remove

Financial Institution L as custodian. In December, 20 and January, 20 , Taxpayer A completed paperwork with Financial Institution M to transfer ownership of Annuity C directly to Taxpayer A, and have Financial Institution M make monthly distributions equal to Amount I by electronic transfer to Account G. On February 24, 20 , Taxpayer A received a letter from Financial Institution M acknowledging the transfer of ownership of Annuity C from Financial Institution L as custodian to Taxpayer A. In the transfer, Annuity C became IRA F, an individual retirement annuity described in section 408(b) of the Code. The letter also informed Taxpayer A that his current systematic withdrawals had been stopped and provided instructions to continue the payments to Taxpayer A. For February, 20 , Financial Institution L made an electronic payment equal to Amount I into Account G. Financial Advisor O states, in a letter dated October 24, 20 , and submitted by Taxpayer A, that Financial Institution M did not distribute Amount H to Financial Institution L in the month of February.

On March 5, 20 , pursuant to Financial Institution M's instructions, Taxpayer A, with Financial Advisor O's assistance, formally requested that the monthly distributions be made electronically to Account G. However, because of a 10-day waiting period for initial electronic processing, Taxpayer A requested that Financial Institution M send him the March 8 check by mail and that Financial Institution M commence electronic transfers to Account G beginning April 8, 20 . Taxpayer A received a check equal to net Amount I which he deposited into Account G on March 15, 20 . However, on March 8, 20 , Financial Institution L also distributed net Amount I to Account G. Taxpayer A was unaware that Financial Institution L had deposited net Amount I into Account G because he believed that the gross distribution of Amount H in February was the last distribution from Financial Institution L. Financial Advisor O states in his letter of October 24, 20 , that he does "not understand how this was allowed." However, the March 8, 20 distribution of net Amount I was made by Financial Institution L to Account G because Financial Institution L was not notified to stop automatic distributions from IRA B as a result of the above-referenced change in ownership of Annuity C.

Taxpayer A has represented that he never intended to receive duplicate distributions during March, 20 . Rather, he relied on Financial Advisor O to transfer all of his retirement assets in IRA D with Financial Institution L to Financial Institution N, and all of Taxpayer A's assets in IRA B with Financial Institution L to IRA F with Financial Institution M, without affecting the series of substantially equal periodic payments begun by Taxpayer A during the year 20 from IRA B. Thus, Financial Advisor O's failure to advise Taxpayer A to transfer the remaining assets of IRA B from Financial Institution L to Financial Institution M constituted an error that resulted in Taxpayer A receiving duplicate distributions of Amount H during March, 20 .

From April 20 through the present, Taxpayer A received monthly distributions equal to Amount I from IRA F with Financial Institution M via electronic transfer to

Account G. In early 20 , when Taxpayer A met with his accountant to prepare his federal income tax return for 20 , he was informed that 13 checks, each equal to Amount H, were distributed to Taxpayer A in 20 .

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount H made to Taxpayer A by Financial Institution L in March, 20 .

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money or any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary of the Treasury may waive the 60-day requirement under sections 408(d)(3)(A) and (D) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I).

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information and documentation submitted by Taxpayer A supports his assertion that the failure to timely roll over Amount H into IRA F was because he was not aware that an error had been made by Financial Advisor O resulting in the distribution to Taxpayer A of an additional Amount H in March, 20

Taxpayer A had relied on Financial Advisor O to oversee the transition from Financial Institution L to Financial Institution N, and to ensure that he continued to receive the correct amount of monthly substantially equal periodic payments. While Taxpayer A received from Financial Advisor O the proper paperwork to transfer IRA D from Financial Institution L to IRA E maintained by Financial Institution N, and to transfer ownership of Annuity C directly to Taxpayer A, to become IRA F, Taxpayer A did not receive any paperwork to transfer the remaining assets of IRA B from Financial Institution L to IRA F maintained by Financial Institution M.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount H from IRA B in March of 20. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute not more than Amount H into IRA F. Provided all other requirements of section 408(d)(3), except the 60-day rollover requirement, are met with respect to such contribution, the contribution will be considered a rollover contribution within the meaning of section 408(d)(3).

Please note that, pursuant to section 408(d)(3)(E) of the Code, this ruling does not authorize the rollover of section 401(a)(9) minimum required distributions.

This ruling is limited to a request for a waiver of the 60-day rollover period. No opinion is expressed as to whether the payments from IRA B and IRA F to

Taxpayer A constitute a series of substantially equal periodic payments within the meaning of section 72(t)(2)(A)(iv) of the Code.

Further, no opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations that may be applicable hereto.

This letter ruling is directed solely to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you have any questions regarding this ruling, you may contact

Sincerely yours,

*Carlton A. Watkins*

Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

Notice of Intention to Disclose  
Deleted copy of this letter

cc: